IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTEENTH DAY OF MARCH

TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 25385 of 2000

Between:

Yousuf Khan s/o.Gulam Jabbar Khan, Muslim,

Aged about 52 years, Occ: Business,

R/o.H.No.11-2-573, Agapura, Hyderabad.

.... PETITIONER

AND

1. The Commissioner of Prohibition and Excise, A.P.,

Hyderabad.

2. The Deputy Commissioner of Prohibition and Excise,

Nizamabad Division, Nizamabad.

3. The S.H.O., Prohibition and Excise, Zaheerabad,

Medak District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ in the nature of Certiorari or any other appropriate writ, order or direction, by calling for the records relating to the proceedings bearing Cr.No.B5/386/97 dt.3.8.98, No.B5/386/97, dt.30.9.2000 of the 2nd respondent and

the proceedings bearing Cr.No.846/DPE/99/B2 dt.16.8.99 of the first respondent and quash the same by declaring it as illegal, arbitrary and unconstitutional apart from violative of Articles 14 and 16 of Constitution of India.

Counsel for the Petitioner: MR.B.A.PRAKASH REDDY

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court made the following:

ORDER:

The petitioner is the owner of the lorry bearing registration No.AP 9U 3846. Admittedly, Cr.No.151/96-97 dated 28.1.1997 has been registered by the Prohibition and Excise Inspector, Zaheerabad, for the offence under Section 8(b) of the A.P. Prohibition Act 1995, hereinafter referred to as 'the Act', against Baswa Rayandin, Driver of the lorry and Saleem Pathan, passenger, alone for the alleged transportation of 24 bottles of B.P.Whisky containing 750 ml each concealed in between egg trays. The owner of the said lorry is not at all committed any offence and no criminal case has been registered against him, who is the petitioner herein. Interim custody of the vehicle was given in favour of the petitioner on 7.2.1997. Thereafter, a show cause notice was issued to the petitioner on 4.10.1997 as to why the said lorry should not be confiscated and the petitioner submitted his explanation on 7.10.1997. It is stated by the petitioner in his explanation that he has given strict instructions to the driver of the lorry to get the onion load transport from Barsi to Hyderabad and also gave instructions not to permit to carry any person or any articles. But the driver of the lorry was permitted to travel one passenger, who was having egg trays with him. The driver is also not aware of the said person carrying liquor in between the egg trays. Neither the driver nor the owner of the lorry is aware of the passenger

carrying the seized liquor. The liquor that was carried by the passenger is without connivance and knowledge with the driver or the owner of the vehicle. Therefore, the petitioner requested to drop all further proceedings of confiscation and release the vehicle. Without considering any of the said contentions raised in the explanation, the Deputy Commissioner of Prohibition and Excise, Nizamabad, the 2nd respondent herein, confiscated the said vehicle in exercise of powers under Section 13(2) of the Act. There is no finding or any averment in the confiscation proceedings about the alleged knowledge of the owner with regard to the transportation of liquor bottles. Against the said confiscation order passed by the 2nd respondent, the petitioner filed an appeal before the Commissioner and Prohibition and Excise, the first respondent herein. The first respondent without dealing with any of the contentions raised by the petitioner, simply dismissed the appeal stating that no material is placed before him to deviate from the findings of the Deputy Commissioner of Prohibition and Excise. Neither the 2nd respondent nor the 1st respondent gave any finding attributing against the petitioner and it is not the case of the department that the petitioner had any knowledge or connivance as regards the illegal transportation of liquor in the said lorry.

A Full Bench of this Court in W.P.No.157 of 2000 held that the law providing for confiscation is an appropriatory legislation and the same is to be strictly construed. Before an order of confiscation is passed, the authority must satisfy itself that all the ingredients therefor are satisfied keeping in view the proposition of law in mind that confiscation is deprivation of property and existence of *mens rea* is also an essential ingredient and plays a vital role in such matters. Where an offence is said to have been committed, the owner of the vehicle can show by producing evidence that he had no knowledge therefor. The owner of the vehicle has no knowledge about the contraband nature of the goods transported in lorry by the passenger. In the instant case also the owner is not having any knowledge about the illegal transportation of the liquor bottles by the passenger or the

driver as the case may be. Hence, I am of the opinion that the owner cannot be made liable for transportation of the said contraband and the vehicle is not liable for confiscation. Therefore, I have no hesitation to set aside the order of confiscation and direct the respondents to release the vehicle of the petitioner. The bank guarantee or security, if any, furnished by the petitioner will be returned to him.

The writ petition is, accordingly, allowed. No order as to costs.

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(V.ESWARAIAH, J.)

15.3.2005

kpr

The Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the 15th day of March, Two thousand and five.

Registrar

To

1. The Commissioner of Prohibition and Excise, A.P.,

Hyderabad.

2. The Deputy Commissioner of Prohibition and Excise,

Nizamabad Division, Nizamabad.

3. The S.H.O., Prohibition and Excise, Zaheerabad,

Medak District.

4. 2 copies to the G.P. for Excise, High Court Buildings, Hyderabad (OUT).

5. 2 C.D. copies.